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State of Oregon
Department of
Environmental
Quality

**NORTHWEST REGION
HAZARDOUS WASTE INSPECTION REPORT FOR:**

UNIVAR
3950 NW Yeon Avenue
Portland, Oregon 97215
EPA ID Number ORD009227398

Prepared by: Rebecca Paul

FILE COPY

Inspection date: June 8, and June 12, 2006

DEQ Inspector(s): Rebecca Paul, Rick Silverman

Facility Representative(s): Mr. Rob Matson, Plant General Manager. During the second visit Mr. Mark Rogers, Regional Operations Manager joined the inspection.

NOTE: All regulatory citations to 40 CFR are as adopted by Oregon Administrative Rules (OAR). Any omissions to this report are not a determination of compliance with applicable regulations.

GENERAL INFORMATION

PURPOSE

These inspections were performed to determine if Univar complies with the Federal Resource Conservation and Recovery Act (RCRA) and the OAR's and standards for a generator of hazardous wastes. The US Environmental Protection Agency (EPA) authorizes Oregon Department of Environmental Quality (DEQ) to regulate the management of Hazardous Waste in Oregon. The purpose of these rules and regulations are to prevent leaks of hazardous wastes onto the land, into the air, or to surface or ground waters and to ensure proper handling and cleanup when leaks occur.

FACILITY BACKGROUND

The last inspection was done by DEQ occurred on October 18, 1996. There were few violations found and those violations were corrected and the facility was not referred to our Enforcement Section. On September 24, 1999, Univar was inspected by the US EPA and there were no violations found during that inspection. They are also under a federal EPA clean up order for contamination found during a past hazardous waste inspection. The US EPA was going to perform an oversight inspection but due to circumstances they were unable to assist with this inspection.

USEPA RCRA



3019440

GENERATOR STATUS

Univar is a Large Quantity Generator. The facility also operates as a waste broker and transporter of hazardous waste for other facilities in the Northwest. During the inspection we discussed both issues.

WASTE STREAMS

Chlorinated Solvents U080, U210, U226, U228: This waste is generated when the product lines are cleaned dry to provide for the off-loading of a different chemical. This waste stream is commonly referred as a heel waste.

Debutyl Phthalate U069: Generated by the disposal of off-specification or out-dated chemicals.

Contaminated water filters D040, U019 and various other waste codes: This waste is generated from the facility's EPA remediation project.

Absorbent pads various waste codes: This waste is generated as a result of spill clean-ups from the operation of this facility.

In general the facility can generate a wide range of waste streams and waste codes due to the nature of their business. Univar is a chemical distributor. There were also waste soils and wastewater treatment sludges generated as a result of Univar's remediation project with the US EPA.

ANNUAL REPORTS

The facility has filed annual reports and has paid the annual fees for the wastes that they generate.

FACILITY PERMITS

The facility has a water quality permit according to the facility profiler. The EPA remediation project has a water discharge with the City of Portland. Univar has no air permit.

FACILITY INSPECTION

Rick Silverman and I inspected the facility on June 8, 2006 and met with Mr. Rob Matson, Univar's Plant General Manager. We explained the nature of the visit and the inspection procedures. Mr. Matson wanted to know what files we wanted to review so that he could have someone to locate the files needed while we toured the facility's

operation. I provided him with a list, but in addition to the normal requested documents I also requested to review some of the facility's waste transporter files because Univar also operates as a waste broker. There were some problems with the paperwork observed at other regulated facilities and some changes had been made to manifests by Univar employees. I gave him the names of the customer records I wanted to see.

We went through Univar's Health and Safety procedures before proceeding with the process area. The first location we visited was the chemical transfer area. Chemicals are received from the semi-trucks and rail cars and are transferred to tanks and eventually to 55 gallon drums. In this area the transfer lines need to be cleaned and any residual chemicals are placed in satellite accumulation drums. Compatible flushings are placed together. There were four drums of satellite waste in this area. The drums were all labeled correctly. Next to these containers was one five-gallon bucket that was not labeled. The material had an odor of oil. I asked where the container had come from. I was told by one of the operators that it is used oil. We explained to them that they needed to label that container and close it.

As we were leaving this area I noticed that there were two drums with hazardous labels. I asked Mr. Matson about the drums. He said that this was not a hazardous waste storage area and that he did not know about these containers. The dates on the drums were 04/29/05 and 10/15/05. Both of these drums were over the 90-day accumulation period for an LQG. We then proceeded to look at other containers that are being stored in this area.

There were several containers of concern. We were told by Mr. Matson that these materials contained products but many of the containers were marked as containing "waste". I informed him that I wanted to take samples of the materials in some of these containers and that I would need to return to the site on Monday June 12, 2006 with sampling equipment. One container was labeled as Glycol Ether EB from spill dated 05/28/04. There were two of these drums. There were also five containers of a pesticide material from a company called Kopcoat. Mr. Matson stated that all of these drums contained products.

During the site visit on June 12, 2006 we were joined by Mr. Mark Rogers, Regional Operations Manager. In the case of the drum marked as Glycol Ether EB the product claim was determined to be untrue. The drum was an open-top drum and was filled with spill pads and booms. I told them that this waste is subjected to performing a waste determination. Mr. Rogers agreed with us. We discussed the waste stream and agreed that the waste would most likely be a non-hazardous waste.

The next three drums were labeled as Wood life waste F-15. The dates on the containers were 10/24/05. We were told that these drums had been collected during the cleaning of a storage tank for a Kopcoat product. Univar handles the storage and distribution of the chemicals for a company called Kopcoat. The label on the drum stated that the material in the drum was 40% sludge and 60% water. It was also written that the containers stated it

was "waste". However, when both Mr. Rogers and Mr. Matson were asked about these containers they stated that these containers were storing a product. There were four drums of this material on site. When I returned to the facility, the drums were labeled with a hazard class label of flammable. They supplied me with an email stating that Kop Coat was going to sample the material and that 10 drums of the material had been shipped back to the Kop Coat facility. According to Mr. Matson the material could be used by an old customer of Kopcoat's located in another state. They said that Kopcoat had switched the formulation and their customers in the Northwest were no longer using this product. We collected a sample from two of the drums. These samples were not the same color and there was a considerable amount of solids present in one of the containers.

The last drum of concern was a 15 gallon drum which was rusted and was labeled as containing a pesticide. The container was marked with the word "waste". During the first inspection it was stated that this drum also contained a product. I asked them how they were going to open the container because it appeared to be rusted shut. During the second site visit Univar representatives stated that they would be disposing that container as a waste. We took photographs of the container and the product label which discusses product storage and the need for the product to be stored out of wet conditions. The fact that it was rusted shut indicated that the product was not being handled or stored properly.

After we had made observations in this storage area on June 8, 2006, we spent more time looking at other areas that were considered to be product storage areas. There were no other problems found in other product storage locations. We proceeded to the main waste storage area for the facility. There were only two hazardous waste drums located in this area. Both of these drums were in compliance.

We also inspected the 10-day transfer area. These drums were for the facility's hazardous waste transportation services. No problems were found in this area. Located in this area we found some aerosol cans that are used to mark out old labels on containers. We asked Mr. Matson about aerosol can disposal. He told us that they use the contents of the cans and then dispose of the empty containers in the trash. We informed him that the cans are not really considered empty and that they are considered a hazardous waste because of the propellants. Aerosol cans are considered a reactive waste, (D003) and the cans need to be punctured and/or disposed of properly.

In the rear of the property is Univar's EPA remediation operation. There Univar generates waste from operating a groundwater cleanup operation. The water is run through a filtering process and the filtered water is discharged under a permit with the City of Portland. Hazardous waste is generated from the filtering units. There were two drums of hazardous waste in this area. The operator stated that these containers were satellite containers. There is a limitation of 55 gallons of waste in the area in order to be considered a satellite collection operation. The date on one container was May 31, 2006 and the other container was dated June 6, 2006. This indicated that there was an excess of 55-gallons of waste in the satellite area. The facility is required to move storage drums to

the waste storage area within three days of being full. The storage drum had been stored in this area in an excess of the three day time period. According to the operator the drum would be moved that day.

The last working area that we inspected was the lab. Mr. Matson informed me that the waste in lab would be reduced substantially. Univar had been testing products for a plating client but they are no longer supplying that customer with chemicals. There were two small satellite containers in the lab to store waste. Those containers were in compliance.

Mr. Silverman asked Mr. Matson about fluorescent light tube management. Mr. Matson took us to an area where the light tubes were stored. The box storing the tubes was not labeled or dated. On June 12, 2006 when we returned to the site it was determined that the light tubes were new tubes and not used light tubes. All of the waste tubes had been removed from the facility and they had no universal waste on-site. We concluded the facility walk-through of the inspection and returned to the office to review the files.

SATELLITE ACCUMULATION AREAS

Univar has two satellite accumulation areas. The first area is located near where the tanker cars and trucks are off-loaded. There are four drums of waste in the area and they are used to collect the heels from the off-loading process. The four drums represent the different hazard classes and waste profiles.

The second satellite area is in wastewater treatment area which is part of the US EPA remediation project. In this area, the date on one container indicated that it was beyond the three day transfer limit. The drum needs to be moved to the storage area within three days otherwise the satellite area would be over the 55-gallon limitation requirement.

90 DAY STORAGE AREAS

There is one area on-site designated as the facility's hazardous waste storage area. There were two drums of waste in this area and they were in compliance.

There was a second location at the facility where two hazardous waste drums were discovered as a result of the inspection. Mr. Matson was not aware that these containers existed until we brought them to his attention. These drums were over the 90-day storage limitation. There were other containers in this area that had the words, "waste" written on the containers. Mr. Matson stated that the materials in those drums were products so I requested to take samples of these containers. When they were sampled some of them were found to contain wastes.

RECORD REVIEW

We reviewed the Univar's manifest and LDR forms, and the material safety data sheets for products. The MSDS request were related to the materials found in the transfer area which were marked as, "Waste".

We also reviewed the facility's training records, spill contingency plan, drum inspection logs, and emergency notifications of the local authorities.

Because Univar offers waste broker services we also reviewed some transporter manifests for their clients. I provided them with copies of some customer manifests where I had discovered problems.

Spill Contingency Plan

The facility had a spill contingency plan. The plan met the requirements and no violations were found. The facility has also sent emergency notifications to local authorities.

Training Records

The facility maintains training records for their employees who manage hazardous waste. The training met the requirements.

Waste Manifests/LDRs

Univar's manifests were reviewed. With respect to the manifests related to Univar's waste there was one manifest during the initial review that did not appear to have the disposal facility signed copy. That manifest problem was resolved during the second site visit and it was discovered that the manifest was actually for another Univar facility in Oregon not for this location.

The manifest review also included some manifests that were the result of the facility's transportation services. I provided some copies of some manifests that were reviewed at other facilities where problems were found. Univar as the transporter had made changes to the manifests that they are not authorized to make. All changes must be approved by the generator of the waste because they are ultimately responsible for all wastes they generate. I also pointed out these changes would also apply to the number of transporters Univar added onto the manifests after the initial shipment is made. When the manifest is not being received from the disposal within a certain time limit, the generator needs to know who to contact. They would not be able to do this because Univar added the transporters on to the shipment without their knowledge.

Inspection records

The weekly drum inspection records were reviewed. Univar had not noticed there were several hazardous waste containers in the bulking area that were not being managed. There were only a few problems noted on the inspection sheets but the corrections to

those problems were not noted. We made some recommendations to the inspection sheets to make them more interactive such as documenting resolutions.

EXIT INTERVIEW

We had two discussions regarding the issues found at the facility. The facility had made some changes to correct some of the problems that were found during the first site visit. We discussed the waste determination issues. Univar decided that some of the materials found in the first satellite area would be handled as a waste. The drum labeled as containing the spilled Glycol ether actually contained booms and spill pads and not as a product as I was originally told. Those drums would be handled as waste. The other small fifteen-gallon drum of pesticide will also be disposed and handled as waste.

The last four drums of tank rinsate which were marked as waste were sampled by the DEQ. Univar stated that they would get back to me on how they wanted to handle this material. I informed them that if they wanted to handle it as a product I would want to see a bill of sale or purchase order for the material. They stated that the material had been tested. I requested to see those results. On June 12, 2006, Univar notified the DEQ that they were going to handle these last drums as waste as well. They stated that the pesticide in the material was too diluted to be effective as a pesticide product.

With the transfer area in general, Mr. Matson stated that part of the problem was that two managers had control of that area. As a result no one person had the control or responsibility. Now there is only one manager responsible for that area.

Information requests

I have requested lab data for the drums of waste that was done as a result of an email that was given to me to document management of the material.

CONCLUSIONS

There were several violations found at the facility. Univar needs to do a waste determination on the drums that were located in the first satellite collection area. They needed to label the small container as storing used oil. During the second visit they stated that they placed the used oil into a used oil drum. There were two drums of hazardous waste that were over the 90-day storage limit. Those drums were moved to the waste storage area. They need to manage waste collected in the satellite area and move the waste into a container within the three day time period. That drum was also moved to the 90 day storage area during the second visit.

RECOMMENDATIONS

A referral will be sent to the Enforcement Section.

POST INSPECTION ISSUES

The facility seems to have made an effort to correct some of the problems discovered as a result of this inspection. They have changed the management of the off loading area so that wastes are not collected in that location without attention. Univar may want to focus some attention on training and internal audits.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
70050390000554606653

July 6, 2006

MR ROBERT MATSON
UNIVAR USA INC
3950 NW YEON AVENUE
PORTLAND OREGON 97215

RE: Univar USA Inc.
ORD 009227398
Pre-Enforcement Notice
PEN-NWR-HW-06-051

Dear Mr. Matson:

On June 8, 2006, and June 12, 2006, the Oregon Department of Environmental Quality (DEQ) conducted a hazardous waste inspection at Univar USA inc. (Univar) located at 3950 NW Yeon Avenue in Portland, Oregon to determine compliance with the applicable state and federal regulations. The purpose of this letter is to inform you of violations found during the compliance inspection so that you can correct them.

Based on the information collected during the inspection, Univar was determined to be a large quantity generator (LQG) of hazardous waste, based on monthly generation of more than 2,220 pounds of hazardous waste.

Based upon inspection of your facility, DEQ has concluded that Univar is responsible for the following violations of Oregon environmental law:

Violation 1

Class I: OAR 340-102-0034(1) and 40 CFR § 262. 34(a) requires a generator to transport waste off site or treat/recycling within 90 days of generation.

There were two drums of waste located near a satellite collection area that were labeled and dated. The dates on the containers 04/29/05 and 10/15/05, which documents these containers had been stored in excess of the 90-day storage requirement. These containers were not being managed at the time. The drums were discovered as a result of this compliance inspection. There was no acknowledgement of these drums in the weekly inspection logs and they were stored in the area not designated by the facility as a hazardous waste storage area.

Corrective action:

Please submit a hazardous waste manifest to document that this waste has been disposed. During the second site visit Univar moved the waste drums to the facilities main waste storage area. They also changed the management of the satellite area so that one manager is now responsible for that area.

Violation 2

Class I: OAR 340-102-001 and 40 CFR § 262.11 require a generator to perform a hazardous waste determination.

There were several other drums in this same area discussed above which were marked as, "Waste". These drums included the following materials: Four 55-gallon drums marked as wood life F-15, two 55-gallon drums of Glycol Ether EB, and one 15 gallon drum of pesticide. Univar stated these were products; however, they were marked as waste. The facility has determined that the two drums of glycol ether was a waste because it did not contain a product. When the drum was opened during the second site visit it contained spill pads and booms. The 15 gallon pesticide container was so rusted it could not be opened to even take a sample so Univar determined that this was a waste. On June 27, 2006, Univar sent a letter stating that the four other drums of Wood Life F-15 will be handled as a hazardous waste. The DEQ sampled two of the drums and the products in the containers were not consistent. They were different colors and one had a large amount of solids present.

The facility also generates aerosol can waste. These were being discarded into the trash instead of being managed as a hazardous waste.

Corrective action:

Please submit a waste determination for all of the wastes listed above, and a hazardous waste manifest for all the waste listed above.

Violation 3

Class 2: 40 CFR 262.34(c)(1) requires a generator to transfer waste in excess of 55-gallons to the main accumulation area.

There were two 55-gallon drums in the waste satellite area both containing waste. The two drums were dated and the dating indicated that the first drum was filled six days earlier.

Univar USA, Inc.

July 6, 2006

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Corrective action:

According to the site manager the full container was moved to the waste storage area after the inspection on June 9, 2004.

Used Oil violations:

Violation 4

Class 1: 40 CFR § 279.22(c)(1) requires a generator to label all containers and tanks container and tanks containing used oil with the words, "Used Oil".

There was one five-gallon bucket of waste oil in the satellite storage area that was not labeled.

Corrective action:

Univar transferred this used oil into a 55-gallon drum that already contained used oil.

Class I violations are considered to be the most serious violations; Class III violations are the least serious.

The violations cited above posed the risk of significant environmental harm and are being referred to DEQ's Office of Compliance and Enforcement for formal enforcement action. Formal enforcement action may result in assessment of one or more civil penalties. A formal enforcement action may include a civil penalty assessment for each day of violation.

DEQ will take into consideration your timely and responsive action on these items in any civil penalty assessment issued by DEQ.

Additional Concerns

According to facilities management there are routine internal compliance audits done at the facility. It appears that the auditors tend to focus solely on waste accumulation and storage areas. The facility should consider broadening those inspections to cover the whole facility because the main problems were found outside the areas where waste is stored and generated.

Required Response

Within thirty (30) days of receipt of this letter the DEQ requests a written response. The response must describe the measures taken, or proposed, to prevent each violation outlined in this letter from reoccurring.

Univar USA, Inc.
July 6, 2006
Page 4 of 4

Univar may also include a description of any steps taken to implement pollution prevention recommendations.

If you feel the DEQ has issued this PEN in error, you may provide information to the office at the address shown to clarify the facts surrounding the alleged violation(s). If the DEQ determines that citation of one or more violations occurred in error, the DEQ will amend or withdraw this PEN. The DEQ endeavors to assist you in your compliance efforts.

Should you have any questions concerning this letter, please contact me at (503) 229-6105.

Sincerely,

Rebecca Paul
Hazardous Waste Inspector

cc: Office of Compliance and Enforcement, DEQ Headquarters

DATE

CERTIFIED MAIL NO. 7004 2510 0006 6950 0494

Univar USA, Inc.
c/o CT Corporation System, Registered Agent
388 State Street, Suite 420
Salem, OR 97301-3581

Re: Notice of Violation and Civil Penalty Assessment
No. LQ/HW-NWR-06-196
Multnomah County

On June 8 and 12, 2006, the Department of Environmental Quality (the Department) conducted a hazardous waste inspection at the Univar USA, Inc. (Univar) facility at 3950 NW Yeon Boulevard in Portland. During the inspection, Department staff observed two drums of hazardous waste solvent, one of which was dated April 29, 2005, and the other dated October 15, 2005.

Univar is a large-quantity generator of hazardous waste, and by allowing hazardous waste to be stored at its facility for more than 90 days Univar violated Oregon law. As a result of the inspection the Department also determined that Univar had not made a hazardous waste determination on four 55-gallon drums of tank rinseate, generated when a tank of Woodlife F pesticide was emptied, or a 15-gallon container of waste pesticide were hazardous wastes. Failing to perform a hazardous waste determination is also a violation of Oregon law.

Improper management of hazardous wastes threatens public health and the environment. To protect public health and the environment, the legislature has enacted statutes and the Department has adopted rules establishing strict requirements governing the accumulation, storage, handling, treatment, and disposal of hazardous waste. Univar's failure to comply with these rules increases the risk the public or the environment could be harmed by mismanagement of these wastes.

In the enclosed Notice, the Department has assessed a total civil penalty of \$7,400. The Department determined the amount of the penalty using the procedures set forth in Oregon Administrative Rule (OAR) 340-012-0045. The Department's findings and civil penalty determinations are attached to the Notice as Exhibits 1 and 2.

If Univar wishes to dispute the civil penalty, Univar must file a written request for a hearing, along with a written Answer that admits or denies each of the facts alleged in

Sections II and III of the enclosed Notice. In the Answer, Univar should also allege all affirmative defenses and provide reasons why they apply in this matter. Univar will not be allowed to raise these issues at a later time, unless Univar can show good cause for failing to raise them in the Answer.

The steps Univar must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section V of the enclosed Notice and in OAR 340-011-0530 and 137-003-0528. Univar needs to follow the rules to ensure that it does not lose the opportunity to dispute the Department's findings.

If the Department does not receive a request for a hearing and Answer within **twenty** calendar days from the date that Univar receives the enclosed documents, the Department will issue a Default Order and the civil penalty assessment will become final and enforceable. Univar can fax a request for hearing and Answer to the Department at 503-229-6762.

If Univar wishes to discuss this matter, or believes there are mitigating factors the Department might not have considered in assessing the civil penalty, a request for an informal discussion may be attached to the appeal. A request to discuss this matter with the Department does not waive the right to a contested case hearing.

I look forward to Univar's cooperation in complying with Oregon environmental law in the future. If, however, any additional violations occur, Univar may be assessed additional civil penalties.

Copies of referenced rules are enclosed. Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Univar is interested in having a portion of the civil penalty fund an SEP, Univar should review the enclosed SEP directive.

If Univar has any questions about the Notice, please contact Jeff Bachman with the Department's Office of Compliance and Enforcement at 503-229-5950 or toll-free at 1-800-452-4011, extension 5950.

Sincerely,

Jane K. Hickman, Administrator
Office of Compliance and Enforcement

e:\winword\letters\univarltr.doc
Enclosures

cc: Rebecca Paul, Northwest Region, DEQ
Mike Kortenhopf, Northwest Region, DEQ
Dick Pedersen, Northwest Region, DEQ

Univar USA, Inc.
Case No. LQ/HW-NWR-06-196
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Land Quality Division, HQ, DEQ
Larry Knudsen, Department of Justice, Portland Office

cc cont'd: Environmental Protection Agency
 Environmental Quality Commission
 Multnomah County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
UNIVAR USA, INC.,
a Washington corporation,

Respondent.

) NOTICE OF VIOLATION AND
) CIVIL PENALTY ASSESSMENT
)

) NO. LQ/HW-NWR-06-196
) MULTNOMAH COUNTY
) ORD 009227398

I. AUTHORITY

This Notice of Violation and Civil Penalty Assessment (Notice) is issued by the Department of Environmental Quality (Department) to Respondent, Univar USA, Inc., a Washington corporation, pursuant to Oregon Revised Statutes (ORS) 468.126 through 468.140, 466.990; ORS Chapter 183; and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS

1. Respondent operates a chemical distribution facility at 3950 NW Yeon Avenue, Portland, Oregon.

2. In 2005, Respondent was a registered large-quantity generator of hazardous waste (Hazardous Waste Generator Identification Number ORD 009227398).

3. Representatives of the Department conducted a compliance inspection at Respondent's facility on June 8 and 12, 2006.

III. VIOLATIONS

Based upon the foregoing findings of fact and above noted inspection, Respondent has violated the following provisions of Oregon's hazardous waste laws and regulations applicable to the facility as set forth in ORS Chapter 466; OAR and Chapter 340, Divisions 100 to 110 and 120, including regulations incorporated in OAR 340-100-0002 adopted pursuant to ORS Chapter 466:

CLASS I VIOLATIONS

1. On each and every day from on or about October 24, 2005, through June 8, 2006, Respondent violated OAR 340-102-0011(2) by failing to make a hazardous waste determination. Specifically, Respondent failed to determine whether four 55-gallon drums of rinseate, generated when a

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1 tank of Woodlife F pesticide was emptied, and a 15-gallon container of pesticide were hazardous
2 wastes. These are Class I violations pursuant to OAR 340-012-0068(1)(a).

3 2. On each and every day from on or about July 29, 2005 and from on or about January 15,
4 2006, through June 12, 2006, Respondent violated 40 Code of Federal Regulations 262.34(a) by storing
5 hazardous waste longer than 90 days. Specifically, Respondent stored two 55-gallon containers of waste
6 solvent, an ignitability characteristic hazardous waste (Hazardous Waste Code D001) for more than 90
7 days. Storage of one container began on April 29, 2005 and continued for 410 days. Storage of the
8 second container began on October 15, 2005, and continued for 240 days. These are Class I violations
9 pursuant to OAR 340-012-0068(1)(d).

10 IV. ASSESSMENT OF CIVIL PENALTY

11 The Director imposes a civil penalty for the violations cited in Section III, above, as follows:

<u>Violation</u>	<u>Penalty Amount</u>
13 1	\$3,600
14 2	\$3,800

15 Respondent's total civil penalty is \$7,400. The findings and determination of Respondent's civil
16 penalty, pursuant to OAR 340-012-0045, are attached and incorporated as Exhibits 1 and 2.

17 V. OPPORTUNITY FOR CONTESTED CASE HEARING

18 Respondent has the right to have a contested case hearing before the Environmental Quality
19 Commission (Commission) or its hearings officer regarding the matters contained in this Notice,
20 provided Respondent files a written request for a hearing and an Answer within **twenty (20) calendar**
21 **days** from the date of service of this Notice. If Respondent fails to file a timely request for a hearing, the
22 late filing will not be allowed unless the reason for the late filing was beyond Respondent's reasonable
23 control. If Respondent fails to file a timely Answer, the late filing will not be allowed unless
24 Respondent can show good cause for the late filing. (*See OAR 340-011-0530 and OAR 137-003-0528*)

25 The request for a hearing must either specifically request a hearing or state that Respondent
26 wishes to appeal this Notice. In the written Answer, Respondent shall admit or deny each allegation of
27 fact contained in this Notice, and shall specifically state all affirmative claims or defenses to the

1 assessment of the civil penalty that Respondent may have and the reasoning in support of any claims or
2 defenses. The contested case hearing will be limited to those issues raised in this Notice and in the
3 Answer. Unless Respondent is able to show good cause:

- 4 1. Factual matters not disputed in a timely manner shall be presumed to be admitted;
- 5 2. Failure to timely raise a claim or defense will waive the ability to raise that claim or
6 defense at a later time;
- 7 3. New matters alleged in the Answer will be presumed to be denied by the Department
8 unless admitted in subsequent pleading or stipulation by the Department or Commission.

9 Send the request for hearing and Answer to: Deborah Nesbit, Oregon Department of
10 Environmental Quality, 811 S.W. 6th Avenue, Portland, Oregon 97204 or via fax at (503) 229-6762.
11 Following the Department's receipt of a request for hearing and an Answer, Respondent will be notified
12 of the date, time and place of the hearing.

13 Failure to file a timely request for hearing or an Answer may result in the entry of a Default
14 Order for the relief sought in this Notice. Failure to appear at a scheduled hearing may result in an entry
15 of a Default Order. The Department's case file at the time this Notice was issued may serve as the record
16 for purposes of entering a Default Order.

17 VI. OPPORTUNITY FOR INFORMAL DISCUSSION

18 In addition to filing a request for a contested case hearing, Respondent may also request an
19 informal discussion with the Department by attaching a written request to the hearing request and
20 Answer.

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VII. PAYMENT OF CIVIL PENALTY

The civil penalty is due and payable ten (10) days after the Order imposing the civil penalty becomes final by operation of law or on appeal. Respondent may pay the penalty before that time. Respondent's check or money order in the amount of \$7,400 should be made payable to "State Treasurer, State of Oregon" and sent to the **Business Office, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.**

Date

Jane K. Hickman, Administrator
Office of Compliance and Enforcement

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failing to perform hazardous waste determinations pursuant to OAR 340-102-0011(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(a).

MAGNITUDE: The magnitude of the violations is minor pursuant to OAR 340-012-0135(3)(a)(C) as the violation involved only one waste stream.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions as documented in Case No. HW-NWR-96-329 for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.

"O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to perform hazardous waste determinations on all wastes it generates. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct the violation and receives a value of -1 pursuant to OAR 340-012-0145(6)(a)(C), because the violation was eventually corrected.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent did not receive a significant economic benefit by failing to timely perform the hazardous waste determination.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + (-)1)] + \$0 \\ &= \$2,000 + [(\$200 \times 8)] + \$0 \\ &= \$2,000 + \$1,600 + \$0 \\ &= \$3,600\end{aligned}$$

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Storing hazardous waste longer than 90 days in violation of 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(d).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(3)(c)(C) as the violation involved less than 250 gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:
$$BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$$

"BP" is the base penalty, which is \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(16), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 4 pursuant to OAR 340-012-0145(2)(a) and -0145(2)(d)(A)(ii). Respondent has seven Class I equivalent prior significant actions as documented in Case No. HW-NWR-96-329 for an initial "P" value of 8. This value is reduced by 4 because the prior significant actions are more than five years old for a final "P" value of 4.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 pursuant to OAR 340-012-0145(3)(a)(B), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violation.

"O" is whether the violation was repeated or ongoing and receives a value of 4 pursuant to OAR 340-012-0145(4)(a)(D), because the violation continued for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. As a large-quantity generator of hazardous waste, Respondent is a heavily regulated entity. Respondent has a duty to ascertain and comply with all applicable regulations relating to hazardous waste and hazardous material. Respondent knows of its responsibility to dispose of hazardous wastes within 90 days, but through inattention allowed the wastes at issue in this violation to accumulate for more than twice the allowable period. Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct the violation and receives a value of 0 pursuant to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of 0 because Respondent did not receive a significant economic benefit by delaying the cost of transporting the waste to a permitted treatment, storage or disposal facility.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$2,000 + [(0.1 \times \$2,000) \times (4 + (-)1 + 4 + 2 + 0)] + \$0 \\ &= \$2,000 + [(\$200 \times 9)] + \$0 \\ &= \$2,000 + \$1,800 + \$0 \\ &= \$3,800\end{aligned}$$